

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

CABLE TELECOMMUNICATIONS ACT OF 1983

The PRESIDING OFFICER. The clerk will state the pending business.

The assistant legislative clerk read as follows:

A bill (S. 66) to amend the Communications Act of 1934.

The Senate resumed consideration of the bill.

ABDNOR AMENDMENTS 1378 AND 1379

Mr. PACKWOOD. Mr. President, in 15 minutes, we shall vote on the first of two amendments by Senator ABDNOR. I encourage the Senate to vote for the first amendment. It is a policy statement which I hope we shall soon be undertaking.

The second amendment, Mr. President, I regard as pernicious. Frankly, it does much more than the Senator from South Dakota intends. Very quickly, let me run through the situation as it exists now in terms of local telephone service and long distance.

Today, by and large, long distance phone rates subsidize rural and residential phone rates by 35 and 50 percent. Local data transmission—not voice, but local data transmission—is so insignificant as not to be a subsidy at all. If any of you think that if the telephone companies get all of the data transmission that cable now gets, or could possibly get in the foreseeable future, if anybody thinks that will reduce telephone rates, you are fooling yourselves and I think fooling your constituents.

For example, let us take the telephone company that serves South Dakota—Northwest Bell. Its total local revenues are \$96 million; the total interstate long distance revenues—and I am not including intrastate—interstate, \$770 million. That is quite a subsidy. Part of it, of course, is the cost of the calls, but a great portion of it is the subsidy. How much local data transmission does this entire company do? Point 9 percent—roughly \$8 million. Out of \$968 million in local telephone charges, \$8 million is not much of a subsidy.

The argument is made that local telephone rates are going up and there is \$4 billion in increases this year from all of the telephone companies requested of the various State public utility commissions. How much are cable revenues this year? About \$4.6 billion. This is all of cable revenues. How much of that cable revenue is data transmission? Less than 0.003 percent—less than \$3 million—is data transmission. So I hope we can put to rest the argument that if we adopt an amendment that says the telephone companies can have all of cable's data transmission, it is going to make any difference in local rates. It is not.

Now, Mr. President, why are we being given the impression this is going to make a difference? I think I understand why. First, you have to understand the relationship between AT&T and its affiliates. It is in limbo. Under Judge Greene's order modifying the AT&T/Justice Department consent decree, AT&T is to be split apart, and the local operating companies are no longer going to have any relation at all to AT&T. As long as AT&T owns the local companies, AT&T does not really care whether or not long-distance revenues are used to subsidize the local rates. It is all part of the same pot. But with the divestiture that is coming, it will no longer be in AT&T's interest to subsidize local phone rates. It is going to be out of it. So it wants others to subsidize the local phone companies.

It is understandable. If I were lobbying for AT&T, that is the position I would take. But you cannot say, if you are AT&T, "We want others to subsidize what we used to subsidize." So AT&T has to give the impression that the local phone rates are going up for reasons other than the elimination of the subsidy.

They blame divestiture. Divestiture has not even taken place yet, does not take place until next January. So, so far, no one blames any increase in local telephone rates on divestiture.

I thought that TIM WIRTH, the chairman of the Subcommittee on Communications in the House, had an interesting comment yesterday. He was quoted in an article in today's Washington Post as follows:

Rep. Timothy E. Wirth (D-Colo.) told the National Cable Television Association's annual convention here that AT&T's opposition to a Senate cable deregulation bill now under consideration is designed to "deflect criticism of its own campaign of sharply raising rates by blaming someone else—in this case cable."

AT&T is opposing the Senate cable bill because it claims that the deregulation of data services offered by cable systems in competition with AT&T will deprive local phone companies of revenue they need to maintain low local rates.

Wirth argued here that cable does not have that kind of market power, and in fact that its services are competitive with AT&T services that represent only 2 percent of phone companies' revenues.

So you cannot blame it on data transmission or divestiture.

Let us take Judge Greene's interesting statement the other day. I am quoting from the Washington Post. This is the judge in the divestiture case.

The Federal judge supervising the massive reorganization of the American Telephone and Telegraph Company, sharply criticized the Federal Communications Commission, saying it was "taking advantage of the divestiture" with policies that will boost the cost of local telephone service.

U.S. District Judge Harold Greene said yesterday that a December FCC ruling requiring consumers to pay an additional "access fee" for long distance calls "jeopardizes the plan of reorganization." He added,

"It is not at odds with the divestiture agreement."

I shall tell you exactly what happened. The Federal Communications Commission started a number of years ago to shift the burden of paying for local telephone rates from long distance to local. That is the FCC. It is at odds with Judge Greene's intent in the divestiture case, but everyone is looking around to find someone else to blame. As Judge Greene clearly indicates, the FCC is partly responsible for the change in philosophy. In fact, that is the biggest reason that local rates are going up. You can talk about inflation, you can talk about depreciation. Basically, it is going up because the FCC has changed its policy.

Let us forget all of that, however, and get to the Abdnor amendment. I want to emphasize again that whether or not the local telephone companies get every penny of revenue from the cable companies offering of data transmission, it would not amount to a whit in terms of subsidy of local telephone service.

Now, the Abdnor amendment:

"Basic telephone service" means telecommunications service that would be subject to regulation by the Commission or any State if offered by the common carrier.

Translated, telecommunications service means anything the telephone companies could offer even if they do not.

In the bill, telecommunications is defined as the transmission of information by electromagnetic means, with or without benefit of any closed transmission medium, including all instrumentalities, facilities, apparatus, and service (including the collection, storage forwarding, switching, and delivery of such information) essential to such transmission.

I shall not go on with the definition, but the bill defines telecommunication service as anything, whether they use wires or use the air, anything of what we call basic communication service which is basic, or cable service, which is one way program, Home Box Office, C-Span, things of that nature.

Everything else in the bill that is telecommunications service is included, and the Abdnor amendment adopts that definition. I asked the Senator as follows:

Will the Senator from South Dakota on my time yield for a question?

Mr. ABDNOR. Yes.

Mr. PACKWOOD. I want to make sure that the Senator's use of the term "telecommunication service" means the same as it did in his previous amendment.

Mr. ABDNOR. Your bill's definition is adequate for me.

Now, I understand this amendment was not per se drafted by the Senator from South Dakota. We have seen this amendment before. It is AT&T's amendment. It drafted it, and I know what it is after. What it wants is anything that will shift from them to you or me, or anybody else, the cost of subsidizing local phone service.

Garn	Kassebaum	Randolph
Glenn	Kasten	Riegle
Goldwater	Lautenberg	Roth
Gorton	Laxalt	Rudman
Grassley	Lugar	Sasser
Hart	Matsunaga	Simpson
Hatch	Mattingly	Specter
Hatfield	Melcher	Stennis
Hawkins	Mitchell	Stevens
Hecht	Moynihan	Symms
Heflin	Murkowski	Thurmond
Heinz	Nickles	Tower
Helms	Nunn	Trible
Hollings	Packwood	Tsongas
Humphrey	Pell	Wallop
Inouye	Percy	Warner
Jackson	Pressler	Weicker
Jepson	Pryor	Wilson
Johnston	Quayle	Zorinsky

NAYS—9

Boschwitz	Levin	Proxmire
Dixon	Mathias	Sarbanes
Leahy	Metzenbaum	Stafford

NOT VOTING—4

Huddleston	Long
Kennedy	McClure

So the bill (S. 66), as amended, was passed as follows:

S. 66

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Cable Telecommunications Act of 1983".

(b) The Communications Act of 1934 is amended by inserting immediately after title V the following new title:

**"TITLE VI—CABLE
TELECOMMUNICATIONS ACT"**

"FINDINGS"

"SEC. 601. The Congress hereby finds that—

"(1) cable systems are engaged in interstate commerce through the origination, transmission, distribution, and dissemination of broadband telecommunications services;

"(2) the provision of broadband telecommunications is of concern to governmental entities;

"(3) a uniform national policy for broadband telecommunications can serve to eliminate and prevent conflicting and counterproductive regulations in order to allow unhampered growth and development of cable as a competitive medium which will be responsive to and serve the needs and interests of the public;

"(4) competition is a more efficient regulator than government of the provision of diverse telecommunications services and as competition continues to develop, the deregulation of telecommunications services should occur; and

"(5) recognizing the long standing tradition of the Congress of promoting universal telephone service at reasonable rates, and recognizing the rapid technological changes of the types and delivery of services offered by the telecommunications industry, it is in the public interest to ensure that all providers of telecommunication services share in the obligation of providing universal service.

"PURPOSES"

"SEC. 602. The purposes of this title are to—

"(1) establish a national policy concerning broadband telecommunications and to encourage a competitive environment for the growth and development of broadband telecommunications;

"(2) establish guidelines for the exercise of Federal, State, and local regulatory authority;

"(3) allow cable systems to be responsive to the needs and interests of the public on an equal basis without a competitive disadvantage with other providers of telecommunications services; and

"(4) eliminate government regulation in order to prevent the imposition of an unnecessary economic burden on cable systems in their provision of service to the public.

"DEFINITIONS"

"SEC. 603. for purposes of this title, the term—

"(1) 'basic service' means the lowest cost tier, other than a tier offered at a discounted fee, of service which is available to subscribers for a fee and which includes the provision of retransmission of local broadcast signals, public, educational, and governmental programming and any other programming service as offered by a cable operator as part of the tier, and specified in the franchise agreement as part of basic service, which is distributed by coaxial cable or any other closed transmission medium;

"(2) 'basic telephone service' means two-way voice grade communications that is held out to the public and that would be subject to regulation by the Commission or any State if offered by a common carrier subject, in whole or in part, to title II of this Act;

"(3) 'broadband telecommunications' means any receipt or transmission of electromagnetic signals, including basic service, cable service, and telecommunications service, over coaxial cable or any other closed transmission medium;

"(4) 'broadcasting' means telecommunications by radio intended to be received by the public, directly or by the intermediary of relay stations;

"(5) 'cable channel' or 'channel' means that portion of the electromagnetic frequency spectrum used in a cable system for the propagation of an electromagnetic signal;

"(6) 'cable operator' or 'cable system operator' means any person or persons, or an agent or employee thereof, that provides basic service, cable service, or telecommunications service over a cable system, or that directly or indirectly owns a significant interest in any cable system, or that otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system;

"(7) 'cable service' means the provision by a channel programmer of one-way programming on a per channel, per program, or other basis which is distributed by coaxial cable or any other closed transmission medium, but such term shall not include basic service;

"(8) 'cable subscriber' means any person who receives or transmits electromagnetic signals distributed over a cable system;

"(9) 'cable system' means a facility or combination of facilities under the ownership or control of any person or persons, which consist of a primary control center used to receive and retransmit, or to originate broadband telecommunications service over one or more coaxial cables, or other closed transmission media, from the primary control center to a point of reception at the premises of a cable subscriber, but such term does not include: (A) a facility or combination of facilities that serves only to retransmit the television signals of television broadcast stations; (B) a facility or combination of facilities that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management; or (C) a common carrier subject to the provisions of title II of this Act whenever such carrier transmits broadband telecommunications services other than basic service or cable service;

"(10) 'channel programmer' or 'programmer' means any person having an agreement to provide basic service or cable service to a cable system operator, or any person who

leases, rents, or is otherwise authorized to use the facilities of a cable system for the provision of basic service or cable service, and such term shall include a cable system operator to the extent that such operator, or person or persons under common ownership or control with such operator, is engaged in the provision of such service;

"(11) 'closed transmission medium' or 'closed transmission media' means media having the capacity to transmit electromagnetic signals over a common transmission path such as coaxial cable, optical fiber, wire, waveguide, or other such signal conductor or device;

"(12) 'franchise' means a permit, license, ordinance, resolution, right-of-way, contract, certificate, agreement, or similar authorization issued by a franchising authority which authorizes the provision of basic service, cable service, or telecommunications service by a cable operator;

"(13) 'franchising authority' means any State, political subdivision, or agency thereof, or any other governmental entity empowered to grant a franchise;

"(14) 'grade B contour' means the field strength of a television broadcast station computed in accordance with regulations promulgated by the Commission;

"(15) 'information' means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or other symbols;

"(16) 'law' includes any regulation, rule, order, standard, policy, requirement, procedure, or restriction;

"(17) 'person' means an individual, partnership, association, joint stock company, trust, corporation or any governmental authority;

"(18) 'telecommunications' means the transmission of information by electromagnetic means, with or without benefit of any closed transmission medium, including all instrumentalities, facilities, apparatus, and services (including the collection, storage, forwarding, switching, and delivery of such information) essential to such transmission;

"(19) 'telecommunications service' means the offering of telecommunications facilities, or of telecommunications but such terms shall not include basic service or cable service; and

"(20) 'United States' means the several States and territories, the District of Columbia, and the possessions of the United States.

"STATEMENT OF AUTHORITY"

"SEC. 604. The provisions of this title shall apply as follows:

"(1) The Commission shall have jurisdiction and exercise authority with respect to broadband telecommunications in accordance with the provisions of this title and other applicable provisions of law.

"(2) Nothing in this title shall be construed as prohibiting any State or political subdivision or agency thereof, or franchising authority, from awarding, in accordance with the provisions of this title, one or more cable franchises within its jurisdiction.

"(3)(A) Except to the extent provided in paragraph (B), no cable system shall provide basic service or cable service without a cable franchise in compliance with this title.

"(B) The provision of paragraph (A) shall not be applicable in the case of any cable system in operation on April 21, 1983.

"OWNERSHIP OR CONTROL OF CABLE SYSTEMS"

"SEC. 605. (a) No State or political subdivision or agency thereof, or franchising authority, shall have the authority to prohibit, directly or indirectly, the ownership of cable systems by any person by reason of that person's ownership of any other media

or other interests, including broadcast, cable, newspaper, programming service, or other printed or electronic information service.

"(b)(1) Notwithstanding the provisions of subsection (a) of this section, for the purpose of ensuring fair and equitable treatment of United States cable enterprises seeking access to markets in a foreign country, the Commission shall have authority to conduct inquiries applicable to foreign persons from that country seeking access to domestic markets in the United States in connection with the construction, ownership and operation of cable enterprises as to whether such United States cable enterprises are permitted fair and equitable access to such foreign markets.

"(2) The Commission shall submit any information obtained through such inquiries to the United States Trade Representative to assist the Trade Representative in his identification and analysis of acts, policies or practices which constitute significant barriers to, or distortions of, United States exports of services.

"(3) For purposes of this subsection, the term 'foreign persons' includes any individual who is not a citizen of the United States, any subsidiary (although established under the laws of the United States or any State thereof) of a corporation or other business entity which was established under the laws of a foreign country, any corporation or other business entity established under the laws of a foreign country, or any corporation or other business entity established under the laws of the United States or any State thereof, if 25 percent or more of the capital stock or equivalent ownership is owned or controlled by an individual who is not a citizen of the United States or by a corporation or other business entity established under the laws of a foreign country, or any subsidiary of a corporation or other business entity established under the laws of a foreign country.

"(c)(1) Notwithstanding the provisions of subsection (a) of this section, a State or political subdivision or agency thereof, or franchising authority, may not acquire an ownership interest in any cable system pursuant to a buy-back provisions of a franchise or require a sale of a cable system to any other person pursuant to a franchise, upon the expiration of the franchise, unless such State, subdivision, agency, authority, or person acquires such ownership or interest at not less than fair market value based upon the ongoing business value of the system. In the event that the cable operator and a State or political subdivision or agency thereof, or franchising authority, are unable to agree upon any such fair market value, then the matter of determining fair market value shall be submitted to binding arbitration. For purposes of arbitration, each of the affected parties shall select one arbitrator and the two arbitrators so selected shall choose a third arbitrator.

"(2) Notwithstanding the provisions of paragraph (1) of this subsection, in the event of termination for cause of a franchise due to a material breach, a State or political subdivision or agency thereof, or franchising authority, may acquire an ownership interest in such cable system but only upon written notice of the breach, reasonable opportunity to remedy the breach, and other due process. Any such termination shall be subject to de novo review by a court of competent jurisdiction.

"(d) In any case in which any such State, subdivision, agency, or authority has or acquires any such ownership or interest, such State, subdivision, agency, or authority shall, in no case, own or control, directly or indirectly, the content of any of the pro-

gramming on such cable system, except for programming on government access channels, unless such State or political subdivision or agency thereof, or franchising authority, establishes an independent board or a separate management company. Such board or company shall not include any State or local office holder.

"ACCESS CHANNELS

"Sec. 606. (a) A cable system operator may be required, as part of the franchise request for proposals, to dedicate or set aside channels for public, educational or governmental users, and the cable system operator may offer in a franchise to dedicate or set aside channels for other channel users.

"(b) The franchising authority and the cable operator may establish rules and procedures for the use of the channels set aside or dedicated pursuant to this section.

"(c) Until such time as there is demand for each channel full time for its designated use, public, educational, governmental, or other channel programming may be combined by the cable system operator on one or more channels, and to the extent time is available on such channels, they may be used by the cable system operator for the provision of other services.

REGULATION OF RATES AND SERVICES

"Sec. 607. (a) Nothing in this title shall be construed as prohibiting any State or political subdivision or agency thereof, or franchising authority, from establishing, fixing, or otherwise restricting the rates charged by cable operators—

"(1) to subscribers for the receipt of basic service,

"(2) to subscribers for equipment necessary for the receipt of basic service, and

"(3) to subscribers for equipment which facilitates the reception of basic service by hearing impaired individuals.

"(b)(1) Any rate regulated pursuant to this section may be increased annually at the discretion of the cable operator by an amount not to exceed the regional consumer price index for the preceding 12 months, upon 30 days prior notice. The ability to affect such increases shall be cumulative for not more than 3 successive years.

"(2) Notwithstanding the provisions of paragraph (1) of this subsection, nothing in this title shall be construed as prohibiting any State or political subdivision or agency thereof, or franchising authority, from providing that such automatic increases shall not apply to a franchise which is in existence on the date of the enactment of the Cable Telecommunications Act of 1983 and which provides for a fixed rate for basic service over a specified period.

"(c) Notwithstanding the provisions of subsections (a) and (b) of this section, a cable system operator may automatically increase basic service rates which exceed the basic rates allowed pursuant to subsection (a) or (b) of this section if—

"(1) such operator has requested the increase in rates; and

"(2) the request is not acted on within 90 days following the date of its receipt.

"(d)(1) Notwithstanding the provisions of subsection (a) of this section, the authority to establish, fix, or otherwise restrict the rates charged to subscribers for the provision of basic services set forth in subsection (a) of this section, except to the extent otherwise provided in paragraph (2) of this subsection, shall not be applicable in any case where the cable system is located within the grade B contour of not less than four television signals of which there shall be one affiliate of each of the three major television networks.

"(2) The provisions of paragraph (1) of this subsection shall not be applicable in the

case of any franchise in existence prior to the date of the enactment of the Cable Telecommunications Act of 1983, if the rates charged to subscribers for the provision of basic services are subject to regulation or are restricted by any State or political subdivision or agency thereof, or any franchising authority. The provisions of this paragraph relating to existing rate regulation of basic service shall be applicable for a period of 5 years following the date of the enactment of such Act, or for a period equal to one-half of the period of the remaining term of such franchise, as of the date of the enactment of such Act, whichever is greater. The provisions of paragraph (1) shall be applicable to any renewal or other extension of any such franchise.

"(3) The provisions of paragraph (1) of this subsection shall not be applicable where the cable system is subscribed to by at least 80 percent of the residences to which cable service is available, unless the cable operator demonstrates that 90 percent of the time, adequate on-site reception of the four television signals is available to more than 50 percent of the households to which cable service is available. Such a determination shall be made by the Commission. Failure by the Commission to make a determination within 180 days after the filing of an application by the cable operator shall be deemed to be a determination that such satisfactory reception is available.

"(e) No executive agency of the United States, including the Commission, and no State or political subdivision or agency thereof, or franchising authority, shall have authority to regulate or restrict the rates for reconnection, additional sets to the same subscriber, or sales of equipment.

"(f) No executive agency of the United States, including the Commission, and no State or political subdivision or agency thereof, or franchising authority, shall have authority to regulate or restrict the provision of or nature of cable services offered over a cable system except as provided in section 613 of this Act.

"(g)(1) No executive agency of the United States, including the Commission, and no State or political subdivision or agency thereof, or franchising authority, shall have authority to regulate or restrict the provision of or nature of telecommunications services offered over a cable system, except with respect to the provision of basic telephone service, intrastate telecommunications services, and except as provided in section 613 of this Act.

"(2)(A) Subject to the provisions of subparagraph (B), a State may require only the filing of informational tariffs for intrastate telecommunications services that would be subject to regulation by the Commission or any State if offered by a common carrier subject, in whole or in part, to title II of this Act, which are offered over a cable system. Such informational tariffs shall specify only the rates, terms, and conditions for the provision of service and shall take effect on the date specified therein.

"(B) Subparagraph (A) shall not apply to any private telecommunications service which is a discrete service dedicated to a single customer and operated by such customer.

"(3) A State shall deregulate the provision of intrastate telecommunications services if it finds that such services are subject to effective competition.

"(4) For purposes of this subsection, an intrastate telecommunications service shall be considered to be subject to effective competition in a particular geographic area or market if there are reasonably available alternatives. In determining whether there

are reasonably available alternatives, the State shall consider—

"(A) the number and size of providers of services;

"(B) the extent to which services are available from providers in the relevant geographic area or market;

"(C) the ability of such providers to make services readily available at comparable rates, terms, and conditions; and

"(D) other indicators of the extent of competition, including affiliation of providers of services.

"(5) Nothing in paragraphs (2), (3), and (4) of this subsection shall be construed as being applicable to basic telephone service.

"(h) Nothing in this Act shall be construed as prohibiting a franchising authority and a cable operator from specifying, in a franchise agreement or renewal thereof, that certain cable services shall not be provided or shall be provided subject to conditions, if such cable services are obscene or are otherwise unprotected by the United States Constitution.

"(i) The provisions of subsections (b), (c), and (d) shall not apply to a franchise agreement in existence on the date of enactment of this Act for a period of 5 years following the date of enactment of this Act, or for the remaining term of such franchise agreement, whichever is greater, in any State which has in effect, and has had in effect since January 1, 1983, a statutory scheme deregulating rates which contains a requirement regarding minimal channel capacity.

FRANCHISE FEES

"Sec. 608. (a) Cable operators may be required in a franchise to pay to a State or political subdivision or agency thereof, or franchising authority, a franchise fee.

"(b)(1) No franchise fee paid by a cable system operator for the privilege of holding a franchise, shall exceed an annual aggregate of 5 percent of such cable operator's gross revenues derived from the operation of the cable system which is the subject of the franchise.

"(2) Nothing in this section shall be construed as limiting fees required by a franchise in effect on the date of enactment of the Cable Telecommunications Act of 1983 to be paid directly or indirectly to entities established for the purpose of facilitating the use of channels set aside for public, educational, or governmental use.

"(c) Any cable system operator may pass the cost of any increase in a franchise fee through to subscribers, and may designate the total franchise fee as a separate item on the subscribers' bills.

"(d) For the purpose of this section—

"(1) 'franchise fee' shall include any tax, fee or assessment of any kind imposed by a franchising authority or governmental authority on a cable system operator or cable subscriber because of their status as such; and

"(2) 'assessment' shall not include bonds, security funds, letters of credit, insurance, indemnification, penalties, liquidated damages or similar requirements which are incidental to the enforcement of the franchising agreement.

"(e) Nothing in this section shall be deemed to require a cable operator to renegotiate the provisions of an existing franchise.

RENEWALS AND EXTENSIONS

"Sec. 609. (a) In any case in which a cable system operator submits an application to the franchising authority for the renewal or other extension of such operator's franchise authorization, the franchising authority shall grant such renewal or other extension unless it finds that—

"(1) the cable system operator has not substantially complied with the material

terms of such franchise and with applicable law, or has been convicted of a felony;

"(2) there has been a material change in the legal, technical, or financial qualifications of the cable system operator that would substantially impair the continued provision of service by such operator;

"(3) the facilities to be provided by such operator, including facilities for governmental access, are unreasonable in light of the community need for and cost of such facilities;

"(4) the signal delivered by the cable system within the control of the cable system operator, has not generally met technical standards as established by the Commission; or

"(5) the proposals contained in the renewal application are otherwise unreasonable.

"(b) A cable system operator must file for renewal at least 24 months, but not more than 36 months, before expiration of the franchise. The franchising authority must consider the renewal within 120 days of submission of the application and conduct any proceedings necessary to adequately consider the application.

"(c) A cable system operator with a franchise which shall expire within 24 months after the date of enactment of the Cable Telecommunications Act of 1983, shall be in compliance with subsection (b) if he files an application for renewal within 60 days after such date of enactment.

"(d) The franchising authority shall—

"(1) negotiate in good faith with any cable system operator regarding franchise renewal within 30 days after the completion of proceedings pursuant to subsection (b); and

"(2) make a final decision on granting or denying renewal within 12 months after receipt of an application;

"(3) in the case of denial of an application—

"(A) not make the final decision for at least 7 months from the date of receipt of the application; and

"(B) notify the applicant by written statement, within 7 days after the final decision, of the reasons for the denial.

"(e) Any renewal applicant adversely affected or aggrieved by a final decision of a franchising authority made pursuant to subsection (d), or by a failure of the franchising authority to act in accordance with subsection (d), may obtain judicial review of such final decision in any court of competent jurisdiction. The existing franchise shall remain in effect pending the completion of such judicial review. Such judicial review shall be de novo, unless the renewal applicant has been afforded a hearing on record before an independent hearing examiner or administrative law judge consistent with State law that requires—

"(1) adequate notice;

"(2) a fair opportunity for participation by the renewal applicant, which includes—

"(A) discovery;

"(B) the filing of pleadings, motions, or objections;

"(C) the introduction of written or oral testimony; and

"(D) cross-examination of opposing parties; and

"(3) a written decision by the examiner or judge based exclusively on the full record of the hearings and stating the specific findings of fact and conclusions of law on which the decision is based.

UNAUTHORIZED INTERCEPTION OR RECEPTION

"Sec. 610. (a) No person or government authority shall intercept or receive broadband telecommunications unless specifically authorized to do so by a cable system operator, channel programmer, or originator of broadband telecommunications or as may

otherwise be specifically authorized by Federal law.

"(b) In order to safeguard the right to privacy and security of broadband telecommunications, such broadband telecommunications shall be deemed to be a 'wire communication' within the meaning of section 2510(1) of title 18 of the United States Code.

"(c) In the event that there may be any difference between the provisions of this section and chapter 119 of title 18 of the United States Code, or any regulations promulgated thereunder, it is the intent of the Congress that such chapter 119 shall be controlling.

PROTECTION OF SUBSCRIBER PRIVACY

"Sec. 611. (a)(1) Except as provided in paragraph (2) of this subsection, no cable operator, channel programmer, or originator of broadband telecommunications may use the cable system to collect personally identifiable information with respect to a cable subscriber, except upon the prior written or electronic consent of that subscriber.

"(2) The provisions of paragraph (1) of this subsection shall not apply to the collection of information solely for billing purposes or to monitor whether there is unauthorized reception of cable telecommunications.

"(3) A cable operator, channel programmer, or originator of broadband telecommunications shall ensure that any such information is destroyed when the information is no longer used or to be used for the purposes for which it was collected.

"(b) No cable operator, channel programmer, or originator of broadband telecommunications shall disclose personally identifiable information obtained pursuant to subsection (a) of this section with respect to a cable subscriber, or personally identifiable information with respect to the services provided to or received by a particular cable subscriber by way of a cable system, except upon the prior written or electronic consent of the subscriber, or pursuant to a lawful court order authorizing such disclosure.

"(c) If a court shall authorize or order disclosure, the cable subscriber shall be notified of such order by the person to whom such order may be directed, within a reasonable period of time before the disclosure is made, but in no event less than 14 calendar days.

"(d) Each cable operator shall, at the time of entering into an agreement to provide cable telecommunications, and regularly thereafter, inform every subscriber of the rights of the subscriber under this section. Such information shall include a description of the nature of the information to be maintained by the cable operator, channel programmer, or originator of broadband telecommunications, and the location and availability of such information.

"(e) A cable subscriber shall have access to all personally identifiable information regarding that subscriber which is collected and maintained by a cable operator, channel programmer, or originator of broadband telecommunications. Such information shall be available to the subscriber at reasonable times and at a place designated by the cable operator, channel programmer, or originator of broadband telecommunications.

"(f) Any cable subscriber whose privacy is violated in contravention of this section, shall be entitled to recover civil damages as authorized and in the manner set forth in section 2520 of title 18 of the United States Code. This remedy shall be in addition to any other remedy available to such subscriber.

"CRIMINAL AND CIVIL LIABILITY"

"Sec. 612. Nothing in this title shall be deemed to affect the criminal or civil liability of channel programmers or cable operators pursuant to the law of libel, slander, obscenity, incitement, invasions of privacy, false or misleading advertising, or other similar laws, except that cable operators shall not incur such liability for any program carried on any public, educational, governmental, or other channel referred to in subsection (a) of section 606, or for any program required by law to be carried on any other channel.

"PROGRAMMING, SERVICES, AND FACILITIES"

"Sec. 613. (a) No State or political subdivision or agency thereof, or franchising authority, may require the provision of particular programming or other broadband services, or facilities, equipment, services, or other items of value which are not related to the provision of broadband telecommunications service.

"(b) A franchising authority may require, as part of the franchise request for proposals—

"(1) channel capacity for public, educational or governmental access purposes; and
 "(2) the construction of cable system facilities or provision of other cable-related equipment.

"(c) A cable operator may offer, but may not be required to provide, as part of basic service or any other tier of service—

"(1) channel capacity for other access uses; and
 "(2) particular services.

"(d) The cable operator may replace or remove a particular service specified in the cable franchise as part of the basic service or any other tier of cable service or telecommunications service in any case in which there has been a significant change in circumstances since the cable operator's offer to provide such service. The cable operator may not be required to retain a specified service in any particular category of service other than basic service.

"(2) In any case in which a cable operator submits a showing that, as a result of a significant change in circumstances, particular facilities and equipment required by the franchise are economically, technically, or otherwise impracticable, the franchising authority shall enter into negotiations with the cable operator for the termination, modification, or deferral of such requirement. If such terms and conditions cannot be agreed upon within 45 days, the matter shall be submitted to binding arbitration. For purposes of arbitration, each of the affected parties shall select 1 arbitrator and the 2 arbitrators so selected shall choose a third arbitrator. The existing franchise provisions, except for those which are the subject of arbitration, shall not be affected by the arbitrators' final decision.

"(e) Except as provided in subsection (c) of this section, a franchising authority may, in accordance with the provisions of this section, enforce any offer to provide particular basic service set forth in subsection (c) or particular cable services or telecommunications services or cable system facilities or cable-related equipment offered by a cable operator provided that the provision of such services, facilities, or equipment is specifically required by the franchise agreement.

"(f) Notwithstanding the preceding provisions of this section, in any case in which a franchise agreement in effect on the date of the enactment of the Cable Telecommunications Act of 1983 requires the cable operator to provide particular programming, services, facilities, cable related equipment, or channel capability for access uses, such requirements, subject to subsections (d) and (e), shall remain in effect for the term of the

franchise and in accordance with the provisions thereof. For purposes of this subsection, a franchise agreement containing such requirements shall be considered to have been in effect on such date of enactment if such agreement was the result of a franchise proceeding for which a request for proposals was originally issued, however subsequently modified or replaced, on or prior to September 30, 1982.

"NO REGULATION AS COMMON CARRIER"

"Sec. 614. No executive agency of the United States, including the Commission, and no State or political subdivision or agency thereof, or franchising authority, shall have authority to impose on a cable system regulation as a common carrier or a utility to the extent that such cable system provides broadband telecommunications service other than basic telephone service."

EXCLUSIVE JURISDICTION

Sec. 2. (a) Except to the extent otherwise specifically provided in title VI of the Communications Act of 1934, as added by the first section of this Act and as provided in section 607 of such title, the Federal Government shall have exclusive jurisdiction over broadband telecommunications regarding matters covered by such title.

(b) Any law of any State or political subdivision or agency thereof, or franchising authority, in effect on the effective date of title VI of the Communications Act of 1934, as added by the first section of this Act, which is in conflict with the provision of subsection (a) of this section relating to the exclusive jurisdiction of the Federal Government, shall be deemed superseded, as of the expiration of the 6-month period following the date of the enactment of this Act, and shall thereafter be null and void and of no effect.

(c) Except to the extent otherwise provided by this Act and the amendments made thereby, any State or political subdivision or agency thereof, or franchising authority, may exercise jurisdiction over matters which are of strictly local concern and which are necessary for reasons of public health, safety, and welfare, including the terms and conditions for the granting of a franchise, the construction and operation of a cable system, and the enforcement and administration of a franchise.

NEW AND ADDITIONAL SERVICES

Sec. 3. Title I of the Communications Act of 1934 is amended by inserting after section 6 the following new sections:

NEW AND ADDITIONAL SERVICES

"Sec. 7. (a) Consistent with sound spectrum management, the Commission shall, to the maximum feasible extent, encourage the introduction of new and additional services by new applicants, existing licensees, or other persons. In any proceeding in which new or additional services are proposed, such services shall be presumed to be in the public interest whenever the Commission finds that such services are technically feasible without causing significant technical degradation to or interference with radio transmissions by other licensees.

"(b) Any person may file with the Commission a petition to establish or an application to offer a new or additional service.

"(c) The Commission must determine whether the new or additional service proposed in a petition or application is in the public interest within 1 year after such petition or application is filed. If the Commission initiates its own proceeding for a new or additional service, such proceeding must be completed within 12 months after it is initiated.

"DECLARATION"

"Sec. 8. The Congress declares that competition is a more efficient regulator than government of the provision of diverse communications services and as competition continues to develop, the deregulation of communications services should occur."

EFFECTIVE DATE

Sec. 4. The provisions of this Act and the amendments made thereby shall take effect upon the date of enactment of this Act.

REDESIGNATION

Sec. 5. The existing title VI of the Communications Act of 1934 is redesignated as title VII, and sections 601 through 609 are redesignated as sections 701 through 709, respectively.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, I wish to commend the distinguished chairman of the Commerce Committee (Senator PACKWOOD) and the Senator from Arizona, the chairman of the Subcommittee on Communications (Senator GOLDWATER), the Senator from Kentucky, and others who participated in the deliberations of the Senate on the cable TV bill. This is an important measure which was hotly debated and adopted in a fairly prompt manner.

I extend my congratulations to them for the efficient management of this important matter.

Mr. President, as I have already announced, there will be no more record votes tonight.

ORDERS FOR WEDNESDAY

ORDER FOR RECESS UNTIL 9:30 A.M. TOMORROW

Mr. BAKER. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 9:30 a.m. tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR REDUCTION IN LEADERSHIP TIME TOMORROW

Mr. BAKER. Mr. President, I further ask unanimous consent that—and may I say, by the way, that I have talked to the minority leader about this and he is agreeable—on tomorrow the time allocated to the two leaders under the standing order be reduced to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR THE RECOGNITION OF SENATOR JACKSON ON TOMORROW

Mr. BAKER. Mr. President, I ask unanimous consent that, after the recognition of the two leaders under the standing order, the distinguished Senator from Washington (Mr. JACKSON) be recognized on a special order of not to exceed 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.